

April 1, 1996

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

LEGAL REPRESENTATION FOR THE CITY OF SAN DIEGO MANAGEMENT TEAM

At the City Council meeting of March 18, 1996, Mr. Ron Saathoff, President of Local 145, International Association of Fire Fighters, AFL-CIO, opposed Item 107, a resolution appointing the Management Team for the purpose of meeting and conferring with the recognized employee organizations. He specifically objected to the proposed appointment of Deputy City Attorney Sharon Marshall to the Management Team, because she regularly advises the Civil Service Commission of The City of San Diego.

Mr. Saathoff based his argument on the belief that, during the Meet and Confer process, the role of the Management Team was adverse to that of the Civil Service Commission and therefore Deputy City Attorney Marshall should not advise the Management Team in this process.

Mr. Saathoff misunderstands the nature of the relationship between the City Council, the Civil Service Commission and the Management Team during Meet and Confer, as well as the role of the City Attorney during this process.

The Charter of The City of San Diego sets forth the legal relationship between the City Council and the Civil Service Commission in Sections 118 and 130. Charter Section 40 makes the elected City

Attorney the attorney for the Council and the City's boards and commissions. Sections 118 and 130 clearly require that the Council and Civil Service Commission act in tandem in order to protect the civil service merit system. Section 118 requires that all rules and amendments thereto for the government, supervision and control of the classified service be recommended by the Commission before being enacted by the City Council. Section 130 grants the City Council the exclusive authority to set the salaries of the classified employees, however the Commission may recommend to the Council classifications of employees who merit special salary consideration. It should be noted that the role of the Civil Service Commission in the meet and confer process is to advise the Council. The Commission has no independent authority to effect benefit or rule changes without a vote of the Council. Such a relationship is hardly adversarial.

During the meet and confer process the Management Team acts as the agent for both the Council and the Commission in negotiations with the recognized employee groups. Granted the recognized employee groups may, at times, have interests or positions that are adverse to the position of the management team, such concerns do not affect the relationship that exists between the City Attorney, the Commission and the Council . The attorneys assigned to the Management Team are not acting as advocates for any particular viewpoint but as advisors to the Management Team, the Council and the Commission in order to ensure that any proposals recommended by the Commission and agreed to by the Council are legal as to both substance and form. There is perhaps no attorney better suited to advise the Management Team on issues affecting the merit system than the same attorney who represents the Commission on a regular basis. Although, there may be times when the Council or the Manager may not agree with a recommendation of the Commission this does not change the role of either the City Attorney or the Management Team.

Mr. Saathoff's confusion may arise from the situation which occurs when the Commission is acting in its quasi-judicial role in hearing an appeal from an employee who has been disciplined by the respective appointing authority. In those instances, due process requires that the appointing authority be represented by a separate deputy city attorney than the one representing the Commission. *Howitt v. Superior Court*, 3 Cal. App. 4th 1575 (1992). However the Commission does not act in its quasi-judicial capacity during the meet and confer process.

Based on the foregoing, there is no legal cause prohibiting Deputy City Attorney Sharon Marshall from advising the Management Team and to be so designated by the Council.

Respectfully submitted,

JOHN W. WITT
City Attorney

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